

(f) *Special exceptions.* Only the Department of Justice (DOJ) may approve claims involving:

(1) Compromise or waiver of a claim for more than \$40,000.

(2) Settlement previously referred to DOJ.

(3) Settlement where a third party files suit against the US or the injured party arising out of the same incident.

#### § 842.118 Assertable claims.

A claim should be asserted when the Air Force has furnished or will furnish medical care in military health care facilities or when the Air Force is responsible for reimbursement to a private care provider and either of the following conditions are met:

(a) Third party liability in tort exists for causing an injury or disease.

(b) Local or foreign law permits the United States to recover or the United States is a third party beneficiary under uninsured motorist coverage, medical pay insurance coverage, worker's compensation, no-fault statutes, or other statutes.

A claim should only be asserted if the base SJA determines it merits assertion. Claims for \$150 or less need not be asserted; they should be asserted only if the base SJA or designee determines the collection will not exceed the cost to collect, the third party offers payment and demands a release from the United States before paying damages to the injured party, or the United States asserts a property damage claim under subpart L arising out of the same incident.

#### § 842.119 Nonassertable claims.

(a) The following are considered nonassertable claims and should not be asserted:

(1) *Claims against any department, agency, or instrumentality of the United States.* "Agency or instrumentality" includes any self-insured non-appropriated fund activity whether revenue producing, welfare, or sundry. The term does not include private associations.

(2) *Claims for care furnished a veteran by the Department of Veterans Affairs (VA) for service connected disability.* However, claims may be asserted for the reasonable value of medical care an

Air Force member receives prior to his or her discharge and transfer to the VA facility.

(3) *Claims for care furnished a merchant seaman under 42 U.S.C. 249.* A claim against the seaman's employer should not be filed.

(b) Claims should not be asserted without HQ USAF/JACC's approval against:

(1) *Government contractors.* In claims in which the United States must reimburse the contractor for a claim according to the terms of the contract, an investigation into the claim is sent to HQ USAF/JACC by the base SJA. The file should contain recommendations regarding assertion and include citations to the specific contract clauses involved.

(2) *Foreign governments.* An investigation is made regarding any claim against foreign governments, their political subdivisions, armed forces members, or civilian employees. The claims files containing the investigation are sent to HQ USAF/JACC along with the base SJA's recommendations regarding assertion.

(3) *US personnel.* Claims are not asserted against members of the uniformed services; employees of the US, its agencies or instrumentalities; or an individual who is a dependent of a service member or employee at the time of assertion unless liability insurance will pay the claim.

(4) *Manufacturers of products in products liability cases.*

#### § 842.120 Asserting the claim.

When asserting the claim, the base SJA will:

(a) Assert it against the third parties whose liability is based in tort using an SF 96, Notice of Claim. Mail the original and one copy to each of the third parties and a copy to the third parties' insurers, if known.

(b) Assert it against third parties or insurers whose liability is not based in tort using a formal letter written on Air Force stationery. The letter will include the facts and legal basis for liability. Bases for liability could include local foreign law, US status as a third party beneficiary under uninsured or underinsured motorist coverage, workers' compensation laws, and